



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 12 2013

VIA EXPRESS MAIL

Chris Kauffman

Osseo, MN 55369

Re: MUR 6642

Dear Mr. Kauffman,

The Federal Election Commission ("Commission") is the regulatory agency that administers and enforces the Federal Election Campaign Act of 1971, as amended ("the Act"). Based on a complaint filed by the Minnesota Democratic Farmer Labor Party, on June 25, 2013, the Commission found reason to believe that Unknown Respondents violated the Act by failing to include a proper disclaimer in a billboard and failing to report an independent expenditure. See 2 U.S.C. §§ 434(b)(4)(H)(iii), (c)(1), (g), 441d(a).¹ The Complaint and the Factual and Legal Analysis, which formed the basis for the Commission's finding, is attached for your information.

The Commission authorized the Office of General Counsel to conduct an investigation concerning the source and cost of the billboard in question. During our investigation, we obtained information indicating that you paid \$3,000 to erect and maintain the billboard advertisement on Interstate 94, west of Albertville, Minnesota, which contained the slogan "FIRE KLOBUCHAR" with a disclaimer stating "NOT PAID FOR BY ANY CANDIDATE RUNNING FOR OFFICE," and that you may be the Unknown Respondents as to which the Commission made findings. We now are preparing to make a recommendation to the Commission in connection with that information. Prior to making our recommendation, we offer you an opportunity to provide in writing a response to the Complaint and the Commission's Factual and Legal Analysis. Should you choose to respond, you may also submit any materials — including documents or affidavits from persons with relevant knowledge — that you believe may be relevant or useful to the Commission's consideration of this matter.

Your submission, if you choose to make one, must be submitted within 15 days of receipt of this letter. You should address any response to the Office of General Counsel, and the response should reference MUR 6642. After 15 days, we will prepare recommendations to the Commission, taking into account any response you submit in making our recommendations.

¹ A "reason to believe" finding is not a finding that any person violated the Act; rather, it means only that the Commission believes a violation may have occurred. See 2 U.S.C. § 437g(a)(2).

MUR 6642 (Unknown Respondents)
Chris Kauffman
Page 2 of 2

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, I have enclosed a brief description of the Commission's preliminary procedures for processing possible violations discovered by the Commission. If you intend to be represented by legal counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Jin Lee, the attorney handling this matter, at (202) 694-1530. Information is also available on the Commission's website at www.fec.gov.

Sincerely,



Daniel A. Petalas
Associate General Counsel for Enforcement

Enclosures:
Complaint
Factual and Legal Analysis

14044353811

BEFORE THE
FEDERAL ELECTION COMMISSION

2012 SEP 18 AM 10:33

Ken Martin
Chair, Minnesota Democratic Farmer Labor Party
255 East Plato Blvd.
St. Paul, MN 55107

OFFICE OF THE CLERK

MUR # 6642

Complainant,

v.

One or more John Does,

Respondents.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against one or more unidentified persons who have sponsored an anonymous communication in violation of the Federal Election Campaign Act ("the Act") and Federal Election Commission ("Commission") regulations.

A. Facts

Senator Amy Klobuchar is a candidate for re-election to the United States Senate from Minnesota. On or about August 21, 2012, Complainant identified a large billboard on Interstate 94, just west of Albertville, Minnesota. The billboard contained the text "FIRE KLOBUCHAR" in large black lettering on a yellow background. Below this, in smaller lettering, the billboard contained the text "NOT PAID FOR BY ANY CANDIDATE RUNNING FOR OFFICE." The billboard did not contain a statement identifying who paid for it. A photograph of the billboard is attached as Exhibit A.

The billboard also contained the logo of Franklin Outdoor Advertising, suggesting that Franklin leased the billboard in question to Respondents.

B. Legal Analysis

Under the Act and Commission regulations, all "public communications" that contain express advocacy are required to contain a disclaimer identifying who paid for the communication. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11. If the communication is authorized by a candidate and paid for by another person, it must clearly state the candidate who authorized the communication and the person who paid for the communication. If the communication is not authorized by a candidate or candidate's committee, the communication must clearly state the name and permanent street address, phone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. "Public communications" include "outdoor advertising facilit[ies]," such as billboards. 11 C.F.R. § 100.26; see 2 U.S.C. § 441d(a).

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Because the billboard contains express advocacy, it is plainly subject to the Act's disclaimer requirements. There is only one way that the recipients of the message could, in fact, "fire" Senator Klobuchar – and that is by voting against her in the upcoming election. The phrase "FIRE KLOBUCHAR," then, is unambiguously an exhortation to vote against Senator Klobuchar. See 11 C.F.R. § 100.22. Accordingly, the advertisement was required to contain a "paid for by" disclaimer and an authorization statement in a printed box.

In addition to failing to include the required disclaimer, Respondents may have committed other violations of the Act. Because it contains express advocacy, if the communication was not made in coordination, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, it would qualify as an "independent expenditure." 11 C.F.R. § 100.16(a). Depending on the amount spent and when the advertisement was first distributed, this may have triggered an obligation to file 48-hour or 24-hour reports. 2 U.S.C. § 434(g).¹

Furthermore, if Respondents spent more than \$1,000 on the billboard, they may have triggered political committee status, obligating them to register and report with the Commission. 2 U.S.C. § 431(4)(a). And, even if they did not, if they spent more than \$250 on the billboard, they would be required to file periodic disclosure reports with the Commission. 2 U.S.C. § 434(c)(1); 11 C.F.R. § 109.10(b).

C. Conclusion

Minnesota voters have a right to know the identity of those who try to influence its elections. To this end, we respectfully request the Commission to investigate to determine the true sponsor of the billboard and determine whether Respondents have committed additional violations of the Act by failing to register or file reports with the Commission. We further request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



SUBSCRIBED AND SWORN to before me this 24 day of August, 2012.



¹ The Minnesota Senate primary was held on August 14. If the cost of the advertisement exceeded \$1,000 and it was distributed in the 20 days leading up to the primary election, the expenditure would have had to be reported within 24 hours. 2 U.S.C. § 434(g)(1).

Linda McEwen
Notary Public

My Commission Expires:

January 31, 2017

14044353814



FEC complaint - anonymous sign_KEN MARTIN DFL

Corey Day

to:

fhampton

09/18/2012 12:29 PM

Cc:

"Ken Martin", "Corey Day"

Hide Details

From: "Corey Day" <cday@dfi.org>

To: <fhampton@fec.gov>,

Cc: "Ken Martin" <kmartin@dfi.org>, "Corey Day" <cday@dfi.org>

1 Attachment



image001.jpg



FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: UNKNOWN RESPONDENTS

MUR 6642

I. INTRODUCTION

The Complaint in this matter alleges that unknown respondents violated the Federal Election Campaign Act, as amended, (the "Act") by paying for a communication expressly advocating the defeat of Senator Amy Klobuchar without a proper disclaimer. The Complaint also alleges that the party responsible for the communication may have been required to file independent expenditure reports or to register as a political committee, depending on the amount of money spent on the communication.

Based on the available information, the Commission finds reason to believe that unknown respondents violated the Act by failing to include a disclaimer and failing to report an independent expenditure. *See* 2 U.S.C. §§ 434(b)(4)(H)(iii), (c)(1), (g), 441d(a).

II. FACTUAL BACKGROUND

The Complaint in this matter concerns a large billboard on Interstate 94, west of Albertville, Minnesota, which contained the slogan "FIRE KLOBUCHAR" with a disclaimer stating "NOT PAID FOR BY ANY CANDIDATE RUNNING FOR OFFICE." Compl., Ex. A. The Complaint contends that "KLOBUCHAR" refers to Senator Amy Klobuchar, who was a candidate for re-election to the United States Senate from Minnesota in 2012. According to the Complaint, the billboard expressly advocates the defeat of Klobuchar because there is only one way that a recipient of the message could "fire" Klobuchar — to vote against her in the general election. Compl. at 1-2.

1 The Complaint claims that because the billboard features the logo of Franklin Outdoor
2 Advertising ("Franklin"), Franklin likely leased the billboard to the unknown respondents.
3 Compl. at 1. According to Franklin's website, the company, located in Clearwater, Minnesota,
4 sells advertising space on billboards throughout Minnesota and Western Wisconsin. *See*
5 www.franklinoutdoor.com. Franklin's website provides no information regarding the pricing of
6 its billboard advertisements.

7 **III. LEGAL ANALYSIS**

8 **A. Failure to Include Proper Disclaimer**

9 The Act requires that any person who makes a disbursement for the purpose of financing
10 communications expressly advocating the election or defeat of a clearly identified candidate
11 must include a disclaimer on any such communication. 2 U.S.C. § 441d(a); *see also* 11 C.F.R.
12 § 110.11(a)(2). If the communication is not authorized by a candidate or an authorized
13 committee, the disclaimer must clearly state the name and permanent street address, telephone
14 number, or World Wide Web address of the person who paid for the communication and state
15 that the communication was not authorized by any candidate or candidate's committee. 2 U.S.C.
16 § 441d(a)(3); 11 C.F.R. § 110.11(b)(3).

17 Commission regulations likewise provide that "[a]ll public communications, as defined in
18 11 C.F.R. § 100.26 . . . that expressly advocate the election or defeat of a clearly identified
19 candidate" require disclaimers. 11 C.F.R. § 110.11(a)(2). Section 100.26 defines a public
20 communication to include "outdoor advertising facility" and "any other form of general public
21 political advertising." *Id.* § 100.26. A communication contains express advocacy when, among
22 other things, it uses phrases such as "vote against Old Hickory," "reject the incumbent," or uses

1 campaign slogans or individual words that in context can have no other reasonable meaning than
2 to urge the defeat of a clearly identified federal candidate. *Id.* § 100.22(a).

3 The disclaimer requirements of 2 U.S.C. § 441d(a) apply to the billboard here. The
4 billboard qualifies as a public communication because it is an outdoor advertising facility, as
5 well as a form of general public political advertising. The billboard contains express advocacy.
6 The phrase "FIRE KLOBUCHAR!" refers to Senator Klobuchar, who was a candidate for re-
7 election to the Senate.¹ To "fire" Senator Klobuchar is a call to vote against her and defeat her
8 candidacy.

9 Therefore, provided that no candidate authorized or paid for the billboard, the person who paid
10 for and disseminated the advertisement — whether an individual or potential committee —
11 should have included a disclaimer identifying who paid for the ad, and the person's address,
12 telephone number, or World Wide Web address. Accordingly, the Commission finds reason to
13 believe that unknown respondents violated 2 U.S.C. § 441d(a).

14 **B. Failure to Report Independent Expenditure**

15 Under the Act, unauthorized political committees, as well as other persons, must file
16 reports disclosing their independent expenditures. *See* 2 U.S.C. § 434(b)(4)(H)(iii) (requiring
17 non-connected political committees to report independent expenditures); *id.* § 434(c)(1)
18 (requiring every person, other than a political committee to report independent expenditures that
19 exceed \$250 during a calendar year). Depending on the amount and timing of the expenditures,
20 a person may have to file a 24- or 48-hour notice of independent expenditures. *See id.*
21 § 434(g)(1)(A) (requiring 24-hour notices for independent expenditures aggregating \$1,000 or
22 more after the 20th day, but more than 24 hours, before the date of an election); *id.*
23

¹ The Commission has found no information indicating that another person with the name "Klobuchar" was running for or holding public office in Minnesota as of August 2012.

1 § 434(g)(2)(A) (requiring 48-hour notices for independent expenditures aggregating \$10,000 or
2 more at any time up to and including the 20th day before the date of an election).

3 Here, the available information suggests that the billboard advertisement may have
4 constituted an independent expenditure because it expressly advocated the defeat of Senator
5 Klobuchar and contained a partial disclaimer stating that the advertisement was not paid for by
6 any candidate. If a political committee made the expenditure, it should have reported the
7 expenditure in reports filed with the Commission. If a person other than a committee made the
8 expenditure and the expenditure exceeded \$250, the person should have filed a report with the
9 Commission. Furthermore, based on the timing and amount spent on the billboard, the unknown
10 respondents may have been required to file a 24- or 48-hour notice of independent expenditure.
11 Accordingly, the Commission finds reason to believe that unknown respondents violated 2
12 U.S.C. § 434(b)(4)(H)(iii), (c)(1), and/or (g) by failing to report an independent expenditure.